

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2006

D047020 In re Austin, a Juvenile

The judgments are affirmed. Haller, J.; We Concur: McConnell, P.J., Irion, J.

D04480 La Jolla Cove Investors, Inc. v. Wrobel et al.

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D047443 Julian P. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petitions are denied. Irion, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D046627 People v. Blair

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. Moore

D045393 People v. Reyes

Cause called on merits. George L. Schraer, Esq. argued for appellant. Megan J. Beale, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D044388 Elwell v. Elwell

Cause called on merits. Christopher Michael Fisher, Esq. argued for appellant. Gastone Bebi, Esq. argued for respondent. Mr. Fisher replied. Cause submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D046458 Elliott v. Richmond American Homes of California, Inc.

Cause called on merits. Stacey Friedman Blank, Esq. argued for appellant. Gregory S. Day, Esq. argued for respondent. Ms. Blank replied. Cause submitted.

D045611 Garrett v. Maddock Nursery

Cause called on merits. James Craig Johnson, Esq. argued for appellant. Gregory Y. Lievers, Esq. argued for respondent. Mr. Johnson replied. Cause submitted.

D045956 Baker et al. v. Tramutola et al.

Cause called on merits. Christopher A. del Valle, Esq. argued for appellant. Gregory C. Kane, Esq. argued for respondent. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D044746 Svane et al. v. Rysewyk et al.

Cause called on merits. Scott A. McMillan, Esq. argued for appellant. Matthew Murphey, Esq. argued for respondent. Peter Dean, Esq. was present in oral argument for respondent, but did not argue. Mr. McMillan replied. Cause submitted.

D045676 Whispering Ridge Homeowners Association v. Chaudry

Cause called on merits. No appearance by Mr. Chaudry in pro per. Bryan Snyder, Esq. was present in oral argument and submitted on the briefs. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D046320 People v. Cunningham

Cause called on merits. Susan K. Keiser, Esq. argued for appellant. Jennifer Jadovitz, Deputy Attorney General was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D045841 People v. Roquemore

Cause called on merits. John David Blair-Loy, Esq. argued for appellant. Arlene Sevidal, Deputy Attorney General argued for respondent. Mr. Blair-Loy replied. Cause submitted.

Court recessed at 2:22 p.m. until Wednesday, February 15, 2006 at 9 a.m.

D046996 Courtney et al. v. Lister

Upon written request filed by appellant and cross-appellant, the appeal and cross-appeal are dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)). Each party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 15, 2006

D045515 People v. Calnan

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., Aaron, J.

D047907 Jerez v Zachay

The appeal is from a non-appealable order. The appeal is dismissed.

D046997 In re Alexandra G., a Juvenile

The judgment terminating parental rights is reversed. This matter is remanded to the juvenile court, with directions that it (1) order the Agency to give proper notice to Maria of a new section 366.26 hearing and (2) hold a new section 366.26 hearing. The remittitur is to issue forthwith. O'Rourke, J.; We Concur: Nares, Acting P.J., Irion, J.

D045218 Berglund v. Arthroscopic & Laser Surgery Center of San Diego, LP

The order submitting this matter on November 15, 2005 is vacated. Due to the complexity of the matter further conferencing among the panelists is required. The matter is resubmitted this date.

D044632 People v. Green

The petition for rehearing is denied.

D047874 Doe v. Superior Court of San Diego County/Anesthesia Service Medical Group Inc., et al.

The petition is denied.

D046326 People v. Rayman

The judgment is reversed. Nares, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D047001 In re Tiffany B., a Juvenile

The judgment terminating parental rights is reversed and the juvenile court is directed to comply with the notice provision of the ICWA. If, after proper notice and inquiry, a tribe does not intervene, the court shall reinstate the judgment. If a tribe intervenes, the court is ordered to conduct a new selection and implementation hearing under section 366.26 in accordance with the ICWA. (See *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111-112; *In re Jonathan S.* (2005) 129 Cal.App.4th 334, 343; *In re Glorianna K.* (2004) 125 Cal.App.4th 1443, 1452.) Irion, J.; We Concur: Haller, Acting P.J., McDonald, J.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D040473 Gober et al. v. Ralphs Grocery Company

Cause called on merits. Daniel J. Gonzalez, Esq. argued for appellant, Ralphs Grocery Company. Charles A. Bird, Esq. argued for appellant, Gober. Mr. Gonzalez replied. Cause submitted.

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Court recessed at 9:36 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D045508 In re Natural Gas Anti-Trust Cases I II III & IV

Cause called on merits. Charles W. Froehlich, Esq. argued for appellant. Barry R. Himmelstein, Esq. argued for respondent. Mr. Froehlich replied. Cause submitted.

D045820 Boychuk et al. v. Ingersoll et al.

Cause called on merits. Mary A. Lehman, Esq. argued for appellant. Robert B. Martin, esq. argued for respondent. Ms. Lehman replied. Cause submitted.

Court recessed at 10:36 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

D046353 Bannister v. Her et al.

Cause called on merits. Bradley Blamires, Esq. argued for appellant. James L. Clayton, Jr., Esq. argued for respondent. Mr. Blamires replied. Cause submitted.

D045755 Staffpro Inc., et al. v. Elite Show Services Inc., et al.

Cause called on merits. Paul Johnson, Esq. argued for appellant. Kenneth Scott Perri, Esq. argued for respondent, Elite Show Services, Inc. Gale Dale Britton, Esq. argued for respondent, Rutherford & Rybacki. Mr. Johnson replied. Cause submitted.

Court recessed at 11:25 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. Moore

D041355 Rogozienski v. Rogozienski

Cause called on merits. Gerald L. McMahon, Esq. argued for appellant/cross-respondent. Edward I. Silverman, Esq. argued for respondent/cross-appellant. Ronald W. Anteau, Esq. was present in oral argument for respondent/cross-appellant, but did not argue. Mr. Mahon replied. Cause submitted.

D045626 Rogozienski v. Rogozienski (both cases were argued together and submitted.)

Court recessed at 2:18 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D046592 Austin v. Maraziti

Cause called on merits. Richard Maraziti, Esq. argued for appellant. No appearance by respondent's counsel. Cause submitted.

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D047103 In re Renee O., a Juvenile

Cause called on merits. Robert Francis McLaughlin, Esq. argued for appellant. Carl Fabian, Esq. argued for the minor. David Casey, Deputy County Counsel argued for respondent. Mr. McLaughlin replied. Cause submitted.

D046261 Rose v. Urdanivia

Cause called on merits. Rick H. Knock, Esq. argued for appellant. Denise M. Osmond, Esq. argued for respondent. Mr. Knock replied. Cause submitted.

D045444 Sinah v. The Regents of the University of California

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Sandra L. McDonough, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

D045181 Murek v. Gassaway et al.

Cause called on merits. Thomas J. Castonguay, Esq. argued for appellant. David A. Kay, Esq. argued for respondent. Mr. Castonguay replied. Cause submitted.

Court recessed at 4:03 p.m. until Thursday, February 16, 2006 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
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D047478 Lorenzo S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. The request for a stay is denied. McConnell, P.J.; We Concur: Nares, J., Aaron, J.

D046616 In re Clayton on Habeas Corpus

The judgment is vacated, the 1986 prior strike conviction is dismissed, and the matter is remanded to the trial court with directions to vacate the guilty plea and conduct further proceedings. McConnell, P.J.; We Concur: Huffman, J., McIntyre, J.

D048024 Rose v. The Superior Court of San Diego County/Torres

Let a writ issue directing the superior court to vacate its order of February 1, 2001, denying the motion to withdraw and enter an order granting the motion. The opinion will be final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3)). Irion, J.; We Concur: McConnell, P.J., Aaron, J.

D045112 People v. Christopher, Jr.

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Haller, J.

D046342 In re Erica E. et al., Juveniles

The orders are affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 16, 2006 (Continued)

D046779 In re Penelope C., a Juvenile

The order is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D046040 People v. Clayton

The appeal is dismissed as moot in light of the disposition in the companion writ proceeding, *In re Ronnie Dean Clayton*, D046616.

D047619 In re Arnold Turner on Habeas Corpus

The petition is denied.

D047857 The Oaks Management Corp. v. Superior Court of San Diego County/Ayyad et al.

The petition is denied.

D047785 In re Marriage of Brandes

The matter having been considered by Justices McConnell, Irion and Aaron, petitioner Charles H. Brandes's appeal from the November 28, 2005 order denying his motion to set aside the August 18, 2005 order on stipulation is dismissed on the ground it is from a nonappealable order. By order of February 6, 2006, this court dismissed appellant's appeal from the August 18, 2005 order on the ground the appeal was from a nonappealable interlocutory order. Because the August 18 order is nonappealable, the November 28 order denying the motion to set aside the August 18 order is likewise nonappealable.

D047593 Ford Motor Company v. Superior Court of San Diego County/Pedersen

The petition is denied.

D045787 In re the Marriage of Engel

Upon written stipulation filed by the parties, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

D047652 In re Maciel on Habeas Corpus

The petition is denied.

D047592 In re Pratts on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D045682 People v. Markley

Cause called on merits. Elizabeth Missakian, Esq. argued for appellant. Annie Featherman Fraser, Deputy Attorney General argued for respondent. Ms. Missakian replied. Cause submitted.

Court recessed at 9:21 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D045539 People v. Atwood

Cause called on merits. Joanna McKim, Esq. argued for appellant. Mike Murphy, Deputy Attorney General argued for respondent. Ms. McKim replied. Cause submitted.

D046052 People v. Thornton and McClaurin

Cause called on merits. Gary Schons, Deputy Attorney General argued for appellant. Carmela F. Simoncini, Esq. argued for respondent, Thornton. Carl M. Hancock, Esq. argued for appellant, McClaurin. Mr. Schons replied. Cause submitted.

D044895 Huff v. Wilkins et al.

Cause called on merits. Douglas G. Benedon, Esq. argued for appellant. Catherine A. Gayer, Esq. argued for respondent. Alan K. Nicolette, Esq. was present in oral argument for appellant, but did not argue. Mr. Benedon replied. Cause submitted.

Court recessed at 10:28 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D045578 Durbin v. Parinello Incorporated

D047659 Durbin v. Superior Court/Parinello Incorporated et al.

Cause called on merits. Michael F. Cressey, Esq. argued for appellant. Phillip Burkhardt, Esq. argued for respondent. Mr. Cressey replied. Cause submitted.

Court recessed at 11:28 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D047185 Hecht, Solberg, Robinson, Goldberg & Bagley v. Superior Court

Matter called on merits. Paul Kennerson, Esq. argued for petitioner. David Blair-Loy, Esq. argued for real party in interest. Mr. Kennerson replied. Matter submitted.

Court recessed at 1:53 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D046103 Rancho Santa Fe Association v. Dolan-King

Cause called on merits. Steven Schorr, Esq. argued for appellant. Michael Hickman, Esq. argued for respondent. Mr. Schorr replied. Cause submitted.

Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D047076 USAA v. Superior Court/Norton-RPI

Matter called on merits. Gregory C. Kane, Esq. argued for petitioner. Jannik Catalano, Esq. argued for real party in interest. Mr. Kane replied. Matter submitted.

Court recessed at 2:40 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D047118 Sierra Window Concepts Ltd. v. Superior Court/Race et al.

Matter called on merits. Jason Robert Thornton, Esq. argued for petitioner. Cassandra G. Thorson, Esq. argued for real party in interest. Mr. Thornton replied. Matter submitted.

Court recessed at 3:30 p.m. until Friday, February 17, 2006 at 9 a.m.

D047952 In re the Marriage of Kreun

The appeal is dismissed as untimely.

D047567 In re the Marriage of Kreun

The court on its own motion vacates its December 28, 2005 order in Case No. D047567 dismissing the appeal filed by Leonora Kreun on November 15, 2005. The court reinstates that appeal.

D047533 In re Montgomery on Habeas Corpus

The petition is denied.

D045925 Brazil v. Sara Lee Corporation

The request for publication of the opinion is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
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D046315 People v. Stone

The judgment is affirmed. O'Rourke, J.; I Concur: Benke, Acting P.J., I Concur in the Result: Irion, J.

D047005 Cole v. Superior Court of San Diego County/People

The motion to dismiss is granted. The order to show cause issued on November 11, 2005, is discharged and the stay of proceedings issued on that date is vacated.

D047450 In re Kalia J., a Juvenile

The judgment is affirmed. Benke, Acting, P.J.; We Concur: McIntyre, J. Aaron, J.

D045332 Krantz v. City of San Diego/Chief of Police, City of San Diego

Order certifying opinion for publication.

D043499 Lukeman v. Pomerado Health System et al.

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D047863 In re Turner on Habeas Corpus

At the request of petitioner, the petition for writ of habeas corpus is dismissed without prejudice.

D045899 People v. Gillispie

The order is affirmed. Haller, J.; We Concur: McConnell, P.J., O'Rourke, J.

D045555 People v. Innovative Financial Services Inc., et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Nares, J.

D047920 Drake v. Superior Court of San Diego County/The People

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

Clerk: D. Moore

D046586 Liker v. The Foundation for The Preservation of the Mt. Helix Nature Theatre

Cause called on merits. Jerome E. Eggers, Esq. argued for appellant. L. Sue Loftin, Esq. argued for respondent. Cause submitted.

Court recessed at 9:23 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D045569 Marquez v. Gough & Gough, Inc.

Cause called on merits. David R. Clark, Esq. argued for appellant. Deb C. Pedersdotter, Esq. argued for respondent. Mr. Clark replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

February 17, 2006 (Continued)

Court recessed at 9:37 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

D044759 Campbell v. Airtouch Cellular et al.

Cause called on merits. Timothy Fisher, Esq. argued for appellant, Nguyen. Ann Marie Mortimer, Esq. argued for appellant, Gifts N Books.Com. Howard D. Finkelstein, Esq. argued for respondent, Campbell and etc. Henry Weissmann, Esq. argued for respondent, AirTouch Cellular. Alan M. Mansfield, Esq. argued for respondent, UCAN. Mr. Fisher replied. Ms. Mortimer replied. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D046161 Holmes v. McGuire

Cause called on merits. Laurence E. McGuire, appellant in pro per argued. Cause submitted.

D046000 Hall v. Shamrock

Cause called on merits. Benjamin Pavone, Esq. argued for appellant. Rodney Lee Donohoo, Esq. argued for respondent. Mr. Pavone replied. Cause submitted.

Court recessed at 2:05 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D045588 County of San Diego v. Vista Unified School District

D046156 County of San Diego v. Vista Unified School District

Cases were argued together.

Cause called on merits. C. Ellen Pilsecker, Deputy County Counsel argued for appellant. Brian Charles Fish, Esq. argued for appellant, City. On second appeal...C. Ellen Pilsecker, Deputy County Counsel argued for appellant. Brian Charles Fish, Esq. argued for appellant, City. Kenneth S. Klein, Esq. argued for respondent, Vista Unified. John C. Lemmo, Esq. was present in oral argument with Mr. Klein, but did not argue. Mr. Fish replied. Cause submitted.

Court adjourned at 4 p.m.

D043877 City of Arcadia et al. v. State Water Resources Control Board et al.

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
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D048049 Bacher v. Bacher

The petition for writ of supersedeas and request for stay have been read and considered by Presiding Justice McConnell and Associate Justices Aaron and Irion. The petition is denied for failure to provide an adequate record for review. The denial is without prejudice to refiling the petition and attaching as exhibits copies of all documents filed with the trial in connection with the hearing on February 17, 2006, along with a reporter's transcript of the hearing.

